



POSTAL REGULATORY COMMISSION

[Docket No. N2021-2; Order No. 5920]

Service Standard Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recently-filed Postal Service request for an advisory opinion on the service standards for First-Class Mail Package Service (FCPS). This document invites public comments on the request and addresses several related procedural steps.

DATES: *Notices of intervention are due:* July 1, 2021; *Live WebEx Technical*

Conference: June 28, 2021, at 11:00 a.m., Eastern Daylight Time, Virtual.

ADDRESSES: Submit notices of intervention electronically via the Commission's Filing Online system at <http://www.prc.gov>. Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR**

FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Pre-Filing Issues
- III. The Request
- IV. Initial Administrative Actions
- V. Ordering Paragraphs

I. Introduction

On June 17, 2021, the Postal Service filed a request for an advisory opinion from the Commission regarding planned changes to the service standards for First-Class Package Service (FCPS).¹ The intended effective date of the Postal Service's planned changes is no earlier than October 1, 2021. Request at 1. The Request was filed pursuant to 39 U.S.C. 3661 and 39 CFR part 3020. Before issuing its advisory opinion, the Commission shall accord an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). This Order provides information on the Postal Service's planned changes, explains and establishes the process for the on-the-record hearing, and lays out the procedural schedule to be followed in this case.

II. Pre-Filing Issues

On March 23, 2021, the Postal Service published a 10-year strategic plan announcing potential changes intended to achieve financial stability and service excellence.² In connection with this publication, on May 25, 2021, the Postal Service also filed a notice of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for FCPS, which would “generally affect service on a nationwide or substantially nationwide basis.” Notice at 1 (quoting 39 U.S.C. 3661(b)).

On May 26, 2021, the Commission issued Order No. 5900, which established Docket No. N2021-2 to consider the Postal Service's proposed changes, notified the public concerning the Postal Service's pre-filing conference, and appointed a Public

¹ United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021 (Request). FCPS “is a mailing service available for lightweight packages—for retail mailers, the weight of the package cannot exceed 13 ounces; for commercial mailers, the weight of the package cannot exceed 15.999 ounces.” Notice of Pre-Filing Conference, May 25, 2021, at 1, n.1 (Notice).

² See United States Postal Service, *Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence*, March 23, 2021, at 3, available at https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf (Postal Service's Strategic Plan). Further information related to the Postal Service's Strategic Plan is available at <https://about.usps.com/what/strategic-plans/delivering-for-america/>.

Representative.³ Due to the COVID-19 pandemic, the Postal Service held its pre-filing conference virtually on June 8, 2021, from 1:00 p.m. to 2:00 p.m. Eastern Daylight Time (EDT). See Request at 2. The Postal Service asserts that it completed the pre-filing requirements appearing in 39 CFR 3020.111 and certifies that it has made a good faith effort to address concerns of interested persons about the Postal Service's proposal raised at the pre-filing conference. See *id.*

III. The Request

A. The Postal Service's Planned Changes

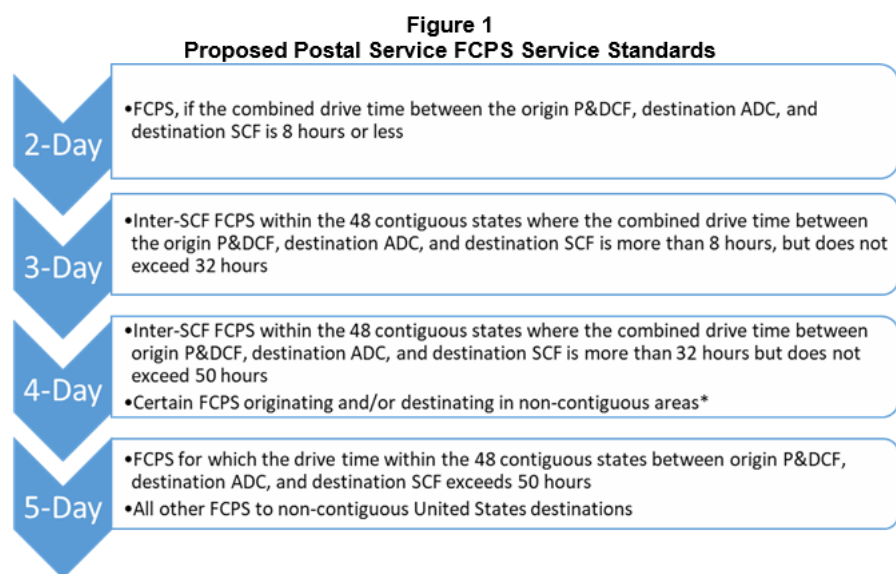
The Postal Service states that the existing service standards for FCPS mirror the existing service standards applied to Market Dominant Single-Piece First-Class Mail (letter- and flat-shaped mailpieces). See Request at 3. The Postal Service's proposed changes for FCPS are similar to the changes proposed for Market Dominant First-Class Mail in Docket N2021-1, because the FCPS service standards would also be adjusted to account for additional drive time between origin and destination processing facilities. See Notice at 2; see *also* Request at 3. However, the actual service standards that the Postal Service proposes to apply to FCPS would differ from those proposed for First-Class Mail. See *id.* The Postal Service plans for its proposed changes for FCPS to become effective no earlier than October 1, 2021. See Request at 1.

The Postal Service proposes to expand the scope of the existing 2-Day service standard applied to FCPS. See Request at 3. For FCPS within the contiguous United States, the Postal Service proposes to narrow the scope of the existing 3-Day service standard; instead 4-Day and 5-Day service standards would apply to certain FCPS traveling longer distances between origin and destination. See *id.* Overall for FCPS volume within the contiguous United States, the Postal Service projects that

³ Notice and Order Concerning the Postal Service's Pre-Filing Conference, May 26, 2021, at 1-4 (Order No. 5900).

approximately 23.6 percent would be subject to the proposed 2-Day service standard; 44.5 percent would be subject to the proposed 3-Day service standard; approximately 17.3 percent would be subject to the proposed 4-Day service standard; and approximately 14.6 percent would be subject to the proposed 5-Day service standard. See *id.* at 4, Figure 1. The Postal Service projects that pharmaceutical volume would experience less impact from the proposed changes than other FCPS volume, estimating that almost all pharmaceutical volume currently subject to the 2-Day service standard and the majority of pharmaceutical volume currently subject to the 3-Day service standard would remain subject to those respective service standards. See *id.* at 5.

Specifically, the Postal Service proposes to apply the following service standards to FCPS.



Notes:

* Specifically, this refers to the following:

- FCPS originating in the contiguous 48 states destined to the city of Anchorage, Alaska, the 968 3-Digit ZIP Code area in Hawaii, or the 006, 007, or 009 3-Digit ZIP Code areas in Puerto Rico.
- FCPS originating in the 006, 007, or 009 3-Digit ZIP Code areas in Puerto Rico and the destination is in the contiguous 48 states.
- FCPS originating in Hawaii and the destination is in Guam, or vice versa.
- FCPS originating in Hawaii and the destination is in American Samoa, or vice versa.
- FCPS for which both the origin and destination are within Alaska.

Request at 5.

"SCF" refers to "Sectional Center Facility." *Id.* at 3. With respect to a particular SCF, "Intra-SCF" refers to volumes that originate and ~~destinate~~ within the 3-Digit ZIP Code areas assigned to that SCF in the Domestic Mail Manual and "Inter-SCF" refers to volumes that originate outside those 3-Digit ZIP Code areas. Revised Service Standards for Market-Dominant Mail Products, 77 Fed. Reg. 31,190, 31,194, n.12 (May 25, 2012) (codified at 39 CFR pt. 121). "P&DCF" refers to Processing & Distribution Center or Facility. Request at 3. "ADC" refers to Area Distribution Center. 77 Fed. Reg. 31,192.

Source: Request at 3, 5.

B. The Postal Service's Position

The Postal Service states that attempting to meet the existing service standards has led to high costs, transportation inefficiencies, and difficulties in providing reliable and consistent service performance. See Request at 6. The Postal Service explains that transporting FCPS by surface (trucks) is more reliable and cost-effective than air transportation. See *id.* The Postal Service asserts that the proposed changes would allow the Postal Service to use surface rather than air transportation for more FCPS between additional Postal Service origin and destination processing facilities (OD Pairs). See *id.* The Postal Service states that the proposed changes could generate a net improvement to the Postal Service's finances of approximately \$55 million annually, when considering transportation cost savings and the Postal Service's estimate that the proposal would not materially impact FCPS volumes. See *id.* at 8.

The Postal Service asserts that implementing the proposed changes would enable it to: provide more reliable and consistent service performance, improve its ability to run according to its operating plans and optimize its surface transportation network, increase its use of more cost-effective air carriers for volume that will continue to be transported by air (such as volume destined for non-contiguous areas), achieve significant cost savings due to the creation of a more efficient transportation network,

and implement future operational benefits. *See id.* at 6-9. It adds that the proposed changes are a key component of the Postal Service's Strategic Plan, intended to achieve financial stability and service excellence. *See id.* at 9.

Further, the Postal Service asserts that the proposed changes would conform to the policies of title 39, United States Code. *See id.* at 9-12. The Postal Service discusses how the proposed changes would continue to satisfy the universal service provisions appearing in 39 U.S.C. 101, 403, and 3661(a) under the proposed service standards.⁴ The Postal Service also asserts that the proposed changes would not impair compliance with the policies of 39 U.S.C. 3633, which govern the financial performance of competitive products. *See Request* at 11-12.

C. The Postal Service's Direct Case

The Postal Service is required to file its direct case along with the Request. *See* 39 CFR 3020.114. The Postal Service's direct case includes all of the prepared evidence and testimony upon which the Postal Service proposes to rely on in order to establish that its proposal accords with and conforms to the policies of title 39, United States Code. *See id.* The Postal Service provides the direct testimony of three witnesses and identifies a fourth individual to serve as its institutional witness and provide information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses.

⁴ *See id.* at 9-11. The Postal Service observes that the Commission has concluded that the universal service obligation extends to competitive products. *See id.* at 9, n.1 (citing Postal Regulatory Commission, *Report on Universal Postal Service and the Postal Monopoly*, 25, December 19, 2008, available at <https://www.prc.gov/docs/61/61628/USO%20Report.pdf>).

Table 1
Postal Service Witnesses

Witness	Topic(s)	Designation
1. Stephen B. Hagenstein	<ul style="list-style-type: none"> • The proposed service standard changes and their benefits • How the proposed service standard changes would affect current mail volume in the contiguous United States (including the actual impact of the proposed changes, in terms of changes to the OD Pairs, as well as current FCPS volume) 	USPS-T-1
2. Michelle Kim	<ul style="list-style-type: none"> • The overall impact of the proposed service standard changes on the Postal Service's financial situation • The projected transportation cost savings related to the proposal 	USPS-T-2
3. Thomas J. Foti	<ul style="list-style-type: none"> • Trends in the lightweight package market • How the proposed service standard changes may impact customer satisfaction • The market research conducted to estimate the potential volume and contribution impact of the proposed service standard changes 	USPS-T-3
4. Sharon Owens	<ul style="list-style-type: none"> • Institutional witness capable of providing information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses 	None filed

Source: Request at 2, 4, 6-8.

Additionally, the Postal Service filed seven library references, four of which are available to the public and three of which are designated as non-public material.

Table 2
Postal Service Library References

Designation	Title	Sponsoring Witness
• LR-N2021-2-1	Calculating Transportation Cost Changes	Michelle Kim
• LR-N2021-2-2	Model Input Data	Stephen B. Hagenstein
• LR-N2021-2-3	Model Defining Tools	Stephen B. Hagenstein
• LR-N2021-2-4	Model Results	Stephen B. Hagenstein
• LR-N2021-2-NP1	Calculating Transportation Cost Changes	Michelle Kim
• LR-N2021-2-NP2	Model Input Data and Results	Stephen B. Hagenstein
• LR-N2021-2-NP3	First-Class Package Service Transit Commitment Survey	Thomas J. Foti

Note: The Postal Service filed the three non-public library references under seal (shaded in the above table), asserting that they consist of detailed volume and cost information regarding purchased transportation; data that reveal cost, volume, weight, modes of transportation, transportation windows, service performance information for competitive products; and market research on FCPS developed by an external firm on behalf of the Postal Service. See Notice of United States Postal Service of Filing of Library References and Application for Non-Public Treatment, June 17, 2021, Application of the Postal Service for Non-Public Treatment, at 1, 3-6.

Source: Notice of United States Postal Service of Filing of Library References and Application for Non-Public Treatment, June 17, 2021.

IV. Initial Administrative Actions

A. General Procedures

The procedural rules in 39 CFR part 3020 apply to Docket No. N2021-2. Before issuing its advisory opinion, the Commission shall accord an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). The Commission will sit *en banc* for Docket No. N2021-2. See 39 CFR 3020.122(b). Due to the COVID-19 pandemic, the Commission is conducting all business, including any hearing or public meeting for Docket No. N2021-2 virtually and not in person.

B. Scope

Docket No. N2021-2 is limited in scope to the specific changes proposed by the Postal Service in its Request. See 39 CFR 3020.102(b). To the extent that participants

raise alternative proposals and present reasons why those alternatives may be superior to the Postal Service's proposal, the Commission would interpret such discussion as critiquing the specific changes proposed by the Postal Service in its Request.⁵

However, the Commission would not evaluate or opine on the merits of such alternative proposals in its advisory opinion. See Order No. 2080 at 18. Pursuant to its discretion, the Commission may undertake evaluation of alternatives or other issues raised by participants in separate proceedings (such as special studies or public inquiries). See 39 CFR 3020.102(b). Moreover, any interested person may petition the Commission to initiate a separate proceeding (such as a rulemaking or public inquiry) at any time. See 39 CFR 3010.201(b) (initiation of notice and comment proceedings).

C. Designation of Presiding Officer

Pursuant to 39 CFR 3010.106 and 3020.122(b), the Commission appoints Commissioner Ann C. Fisher to serve as presiding officer in Docket No. N2021-2, effective immediately. In addition to the authority delegated to the presiding officer under 39 CFR 3010.106(c), the Commission expands the presiding officer's authority to allow her to propound formal discovery requests upon any party, at her discretion. The numerical limitation on interrogatories appearing in 39 CFR 3020.117(a) shall not apply to the presiding officer. The Commission also authorizes Commissioner Fisher to rule on procedural issues such as motions for late acceptance and discovery-related matters such as motions to be excused from answering discovery requests. Commissioner Fisher shall have authority to issue any ruling in this docket not otherwise specifically reserved to the Commission by 39 CFR 3020 and 3010.106.

⁵ See Docket No. RM2012-4, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3661, May 20, 2014, at 18 (Order No. 2080).

D. Procedural Schedule

The Commission establishes a procedural schedule, which appears below the signature of this Order as Attachment 1. See 39 CFR 3010.151, 3020.110; see *also* 39 CFR part 3020 Appendix A. These dates may be changed only if good cause is shown, if the Commission later determines that the Request is incomplete, if the Commission determines that the Postal Service has significantly modified the Request, or for other reasons as determined by the Commission. See 39 CFR 3020.110(b) and (c).

E. How to Access Material Filed in this Proceeding

1. Using the Commission's Website

The public portions of the Postal Service's filing are available for review on the Commission's website (<http://www.prc.gov>). The Postal Service's electronic filing of the Request and prepared direct evidence effectively serves the persons who participated in the pre-filing conference. See 39 CFR 3020.104. Other material filed in this proceeding will be available for review on the Commission's website, unless the information contained therein is subject to an application for non-public treatment.

2. Using Methods Other than the Commission's Website

The Postal Service must serve hard copies of its Request and prepared direct evidence "only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission's website." 39 CFR 3020.104. If you demonstrate that you are unable to effectively use the Commission's Filing Online system or are unable to access the internet, then the Secretary of the Commission will serve material filed in Docket No. N2021-2 upon you via First-Class Mail. See 39 CFR 3010.127(b) and (c). You may request physical service by mailing a document demonstrating your need to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. Service may be delayed due to the impact of the

COVID-19 pandemic. Pursuant to 39 CFR 3010.127(c), the Secretary shall maintain a service list identifying no more than two individuals designated for physical service of documents for each party intervening in this proceeding. Accordingly, each party must ensure that its listing is accurate and should promptly notify the Secretary of any errors or changes. See 39 CFR 3010.127(c).

3. Non-Public Material

The Commission's rules on how to file and access non-public material appear in 39 CFR part 3011. Each individual seeking non-public access must familiarize themselves with these provisions, including the rules governing eligibility for access; non-dissemination, use, and care of the non-public material; sanctions for violations of protective conditions; and how to terminate or amend access.⁶ Any person seeking access to non-public material must file a motion with the Commission containing the information required by 39 CFR 3011.301(b)(1)-(4). Each motion must attach a description of the protective conditions and a certification to comply with protective conditions executed by each person or entity (and each individual working on behalf of the person or entity) seeking access. 39 CFR 3011.301(b)(5)-(6). To facilitate compliance with 39 CFR 3011.301(b)(5)-(6), a template Protective Conditions Statement and Certification to Comply with Protective Conditions appears below the signature of this Order as Attachment 2, for completion and attachment to a motion for access. See 39 CFR part 3011 subpart C, appendix A. Persons seeking access to non-public material are advised that actual notice provided to the Postal Service pursuant to 39 CFR 3011.301(b)(4) will expedite resolution of the motion, particularly if the motion for access is uncontested by the Postal Service.

⁶ See 39 CFR 3011.300, 3011.302-304.

Non-public information must be redacted from filings submitted through the Commission's website; instead, non-public information must be filed under seal as required by 39 CFR part 3011 subpart B.

F. How to File Material in this Proceeding

1. Using the Commission's Filing Online System

Except as provided in 39 CFR 3010.120(a), all material filed with the Commission shall be submitted in electronic format using the Filing Online system, which is available over the internet through the Commission's website. The Commission's website accepts filings during the Commission's regular business hours, which are from 8:00 a.m. through 4:30 p.m. EDT, except for Saturdays, Sundays, and Federal holidays. A guide to using the Filing Online system, including how to create an account, is available at <https://www.prc.gov/how-to-participate>. If you have questions about how to use the Filing Online system, please contact the dockets clerk by email at dockets@prc.gov or telephone at (202) 789-6847. Please be advised that the dockets clerk can only answer procedural questions but may not provide legal advice or recommendations.

2. Using Methods Other than the Commission's Filing Online system

Material may be filed using a method other than the Commission's website only if at least one of the following exceptions applies:

- The material cannot reasonably be converted to electronic format,
- The material contains non-public information (see 39 CFR part 3011),
- The filer is unable to effectively use the Commission's Filing Online system and the document is 10 pages or fewer, or
- The Secretary has approved an exception to the requirements to use the Commission's Filing Online system based on a showing of good cause.

39 CFR 3010.120(a).

Material subject to these exceptions may be filed by mail to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. Due to the agency's virtual status, posting mailed materials to the Commission's website may be delayed. Accordingly, before mailing materials, it is strongly recommended that individuals contact the docket clerk by email at *dockets@prc.gov* or telephone at (202) 789-6847.

G. Technical Conference

1. Date and Purpose

A technical conference will be held live via WebEx on June 28, 2021, at 11:00 a.m. EDT.⁷ The technical conference is an informal, off-the-record opportunity to clarify technical issues as well as to identify and request information relevant to evaluating the Postal Service's proposed changes. See 39 CFR 3020.115(c). The technical conference will be limited to information publicly available in the Request. Any non-public information, including information in non-public Library References attached to the Request, should not be raised at the technical conference. At the technical conference, the Postal Service will make available for questioning its three witnesses whose direct testimony was filed along with the Request and a fourth individual to serve as its institutional witness, who will provide information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses. See Request at 2; see *also* 39 CFR 3020.113(b)(6)-(7), 3020.115(b). The names and topics to which these four individuals are prepared to address are summarized above in Section III.C., Table 1, *infra*.

⁷ Based upon the pro forma schedule set forth in appendix A of 39 CFR part 3020, this technical conference would be set for day 10, which would be Sunday June 27, 2021; however, this date is adjusted to Monday June 28, 2021, in accordance with 39 CFR 3020.103.

2. How to Livestream the Technical Conference

The technical conference will be broadcast to the public via livestream, which will allow the public to view and listen to the technical conference, as it is occurring and after. To view and listen to the livestream, on or after 11:00 a.m. EDT on June 28, 2021, an individual must click on the internet link that will be identified on the Commission's YouTube Channel, which is available at <https://www.youtube.com/channel/UCbHvK-S8CJFT5yNQe4MkTiQ>. Individuals do not have to register in advance to access the livestream. Please note that the livestream is a broadcast; therefore, there is a brief delay (several seconds) between the technical conference being captured on camera and being displayed to viewers of the livestream. Additionally, please note that clicking on the livestream link will not allow an individual the opportunity to question the Postal Service's four witnesses. Details on how to participate in the live WebEx (and have the opportunity to question the Postal Service's four witnesses) follow.

3. How to Participate in the Technical Conference

To participate in this live technical conference and have the opportunity to ask questions of the Postal Service's four witnesses, an individual need not formally intervene in this docket, but must register in advance as follows. Each individual seeking to participate in the live WebEx using an individual device (e.g., a desktop computer, laptop, tablet, or smart phone) must register by sending an e-mail to N2021-2registration@prc.gov, with the subject line "Registration" by June 23, 2021. In order to facilitate orderly public participation, this email shall provide the following information:

- your first and last name;
- your e-mail address (to receive the WebEx link);
- the name(s) of the Postal Service witness(es) you would like to question and/or the topic(s) of your question(s); and

- your affiliation (if you are participating in your capacity as an employee, officer, or member of an entity such as a corporation, association, or government agency).

The *N2021-2registration@prc.gov* email address is established solely for the exchange of information relating to the logistics of registering for and participating in the technical conference.⁸ No information related to the substance of the Postal Service's Request shall be communicated, nor shall any information provided by participants apart from the list identified above be reviewed or considered. Only documents filed with the Commission's docket system will be considered by the Commission. Before the technical conference, the Commission will e-mail each identified individual a WebEx link, an explanation of how to connect to the technical conference, and information regarding the schedule and procedures to be followed.

4. Availability of Materials and Recording

To facilitate discussion of the matters to be explored at the technical conference, the Postal Service shall, if necessary, file with the Commission any materials not already filed in Docket No. N2021-2 (such as PowerPoint presentations or Excel spreadsheets) that the Postal Service expects to present at the technical conference by June 25, 2021. Doing so will foster an orderly discussion of the matters under consideration and facilitate the ability of individuals to access these materials should technical issues arise for any participants during the live WebEx. If feasible, the recording will be available on the Commission's YouTube Channel at <https://www.youtube.com/channel/UCbHvK-S8CJFT5yNQe4MkTiQ>.

Participants in the WebEx, by participating, consent to such recording and posting. Information obtained during the technical conference or as a result of the

⁸ Please refer to the Commission's privacy policy which is available at <https://www.prc.gov/privacy>.

technical conference is not part of the decisional record, unless admitted under the standards of 39 CFR 3010.322. See 39 CFR 3020.115(e).

H. How to Intervene (Become a Party to this Proceeding)

To become a party to this proceeding, a person or entity must file a notice of intervention by July 1, 2021.⁹ This filing must clearly and concisely state: the nature and extent of the intervenor's interest in the issues (including the postal services used), the intervenor's position on the proposed changes in services (to the extent known), whether or not the intervenor requests a hearing, and whether or not the intervenor intends to actively participate in the hearing. See 39 CFR 3010.142(b). Page one of this filing shall contain the name and full mailing address of no more than two persons who are to receive service, when necessary, of any documents relating to this proceeding. See *id.* A party may participate in discovery; file testimony and evidence; conduct written examination of witnesses; conduct limited oral cross-examination; file briefs, motions, and objections; and present argument before the Commission or the presiding officer. See *id.* sections 3010.142(a); 3020.122(e). An opposition to a notice of intervention is due within 3 days after the notice of intervention is filed. See *id.* section 3010.142(d)(2).

I. Discovery

1. Generally Applicable Discovery Procedures

Discovery requests may be propounded upon filing a notice of intervention. Discovery that is reasonably calculated to lead to the admissible evidence is allowed. See 39 CFR 3020.116(a). Each party must familiarize themselves with the Commission's rules appearing in 39 CFR part 3020, including the rules for discovery in N-dockets generally and specific to interrogatories, requests for the production of

⁹ Neither the Public Representative nor the Postal Service must file a notice of intervention; both are automatically deemed parties to this proceeding. See 39 CFR 3010.142(a).

documents, and requests for admissions.¹⁰ No party may propound more than a total of 25 interrogatories (including both initial and follow-up interrogatories) without prior approval by the Commission or presiding officer.¹¹

Each answer to a discovery request is due within 7 days after the discovery request is filed.¹² Any motion seeking to be excused from answering any discovery request is due within 3 days after the discovery request is filed. See 39 CFR 3020.105(b)(1). Any response to such motion is due within 2 days after the motion is filed. See *id.* section 3020.105(b)(2). The Commission expects parties to make judicious use of discovery, objections, and motions practice, and encourages parties to make every effort to confer to resolve disputes informally before bringing disputes to the Commission to resolve.

2. Discovery Deadlines for the Postal Service's Direct Case

All discovery requests regarding the Postal Service's direct case must be filed by July 15, 2021. All discovery answers by the Postal Service must be filed by July 22, 2021. The parties are urged to initiate discovery promptly, rather than to defer filing requests and answers to the end of the period established by the Commission.

J. Rebuttal Case Deadlines

A rebuttal case is any evidence and testimony offered to disprove or contradict the evidence and testimony submitted by the Postal Service. A rebuttal case does not include cross-examination of the Postal Service's witnesses or argument submitted via a brief or statement of position. Any party that intends to file a rebuttal case must file a

¹⁰ See 39 CFR 3020.116-3020.119.

¹¹ See 39 CFR 3020.117(a); Order No. 2080 at 42; see *also* Docket No. N2021-2, Order Affirming Presiding Officer's Ruling No. N2021-1/9, May 26, 2021, at 9 (Order No. 5901).

¹² See 39 CFR 3020.117(b)(4), 3020.118(b)(1), 3020.119(b)(1). Filing an opposition to a notice of intervention shall not delay this deadline. See 39 CFR 3010.142(d)(3).

notice confirming its intent to do so by July 20, 2021.¹³ Any rebuttal case, consisting of any testimony and all materials in support of the case, must be filed by July 29, 2021.

K. Surrebuttal Case Deadlines

A surrebuttal case is any evidence and testimony offered to disprove or contradict the evidence and testimony submitted by the rebutting party. A surrebuttal case does not include cross-examination of the rebutting party's witnesses or argument submitted via a brief or statement of position. Any party that intends to file surrebuttal case must obtain the Commission's prior approval and must bear the burden of demonstrating exceptional circumstances that would warrant granting the motion. See 39 CFR 3020.121(b). Any motion for leave to file a surrebuttal case is due July 30, 2021.¹⁴ Any response to such motion is due August 3, 2021.¹⁵ Any surrebuttal case, consisting of any testimony and all materials in support of the case, must be filed by August 5, 2021.

L. Hearing Dates

The Commission expects that this case will require no more than one or two business days for hearing, but reserves three business days out of an abundance of caution and consistent with the pro forma schedule set forth in appendix A of 39 CFR part 3020. If no party files a notice of intent to file a rebuttal case by July 20, 2021, then

¹³ The pro forma schedule set forth in appendix A of 39 CFR part 3020 lists this deadline as day 37, which would be Saturday July 24, 2021. Consistent with Docket No. N2021-1, this deadline is adjusted to day 33, Tuesday July 20, 2021, so as to provide additional time necessary for the coordination of the technical aspects of the virtual hearing. See Docket No. N2021-1, Presiding Officer's Ruling Adjusting Procedural Schedule and Modifying Pre-Hearing Filings, May 13, 2021, at 2 (Docket No. N2021-1 POR No. 7).

¹⁴ The pro forma schedule set forth in appendix A of 39 CFR part 3020 lists this deadline as day 44, which would be Saturday July 31, 2021. However, this deadline is adjusted to Friday July 30, 2021, so as to provide additional time necessary for the coordination of the technical aspects of the virtual hearing.

¹⁵ The pro forma schedule set forth in appendix A of 39 CFR part 3020 lists this deadline as day 46, which would be Monday August 2, 2021. However, this deadline is adjusted to Tuesday August 3, 2021, so as to allow 2 business days to respond to the filing of a motion for leave to file a surrebuttal case.

the hearing of the Postal Service's direct case shall begin July 29, 2021, with additional days reserved on July 30, 2021 and August 2, 2021. If any party files a notice of intent to file a rebuttal case by July 20, 2021 but no surrebuttal testimony will be presented, then the hearing of the Postal Service's direct case shall begin August 5, 2021, with additional days reserved on August 6, 2021, and August 9, 2021. If any party files a notice of intent to file a rebuttal case by July 20, 2021, and the Commission approves the presentation of surrebuttal testimony, then the hearing of the Postal Service's direct case shall begin August 10, 2021, and the hearing of the surrebuttal case shall end August 12, 2021.

M. Presentation of Evidence and Testimony

Evidence and testimony shall be in writing and may be accompanied by a trial brief or legal memoranda. *Id.* section 3020.122(e)(1). Whenever possible and particularly for factual or statistical evidence, written cross-examination will be used in lieu of oral cross-examination. *Id.* section 3020.122(e)(2).

Oral cross-examination will be allowed to clarify written cross-examination and/or to test assumptions, conclusions, or other opinion evidence. *Id.* section 3020.122(e)(3). Assuming that no rebuttal case is filed, any party that intends to conduct oral cross-examination shall file a notice of intent to do so by July 22, 2021.¹⁶ The notice must include an estimate of the amount of time requested for each witness.

In lieu of submitting hard copy documents to the Commission as contemplated by 39 CFR 3020.122(e)(2), each party shall file a single document titled "Notice of Designations" containing a list for each witness that identifies the materials to be designated (without the responses). The filing party shall arrange its list for each

¹⁶ Consistent with the necessary adjustments made in Docket No. N2021-1 to conduct a virtual hearing, the Commission adjusts the timeframe contemplated by 39 CFR 3020.122(e)(3) and instead sets this deadline as 7 days before the beginning of the virtual hearing (assuming that no rebuttal case is filed).

witness in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory. For example:

Designations for Witness One

ABC/USPS-T1-1
ABC/USPS-T1-3
DEF/USPS-T1-1
GHI/USPS-T1-3
JKL/USPS-T1-2

Designations for Witness Two

DEF/USPS-T2-4
GHI/USPS-T2-2

Assuming that no rebuttal case is filed, each party shall file its Notice of Designations by July 23, 2021.

Assuming that no rebuttal case is filed, on July 27, 2021, the Postal Service shall file a “Notice of Designated Materials” identifying any corrections to the testimony or designated materials for each witness sponsored by the Postal Service. Attached to that notice shall be a single Adobe PDF file that contains, in order: the witness’s testimony (with any corrections highlighted); identification of any library references sponsored by the witness; and the witness’s designated written responses in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory (with any corrections to the responses highlighted).

N. Presentation of Argument

1. General Procedures

Any person that has intervened in Docket No. N2021-2 (and thereby formally became a party to this proceeding) may submit written argument by filing a brief or a statement of position; they also may request to present oral argument at the hearing. See 39 CFR 3020.123, *see also* 39 CFR 3010.142(a). Any person that has not intervened in Docket No. N2021-2 may submit written argument by filing a statement of position. See 39 CFR 3020.123(g), *see also* 39 CFR 3010.142(a).

2. Presentation of Written Argument

A brief is a written document that addresses relevant legal and evidentiary issues for the Commission to consider and must adhere to the requirements of 39 CFR 3020.123(a)-(f). A statement of position is a less formal version of a brief that describes the filer's position on the Request and the information on the existing record in support of that position. See 39 CFR 3020.123(g).

a. Briefing Deadlines

Assuming that no rebuttal case is filed, initial briefs are due August 9, 2021, and reply briefs are due August 16, 2021. If any party files a notice confirming its intent to file a rebuttal case by July 20, 2021, then the briefing schedule may be revised.

b. Deadline for Statement of Position

Any interested person, including anyone that has not filed a notice of intervention and become a party to this proceeding, may file a statement of position. See 39 CFR 3020.123(g), *see also* 39 CFR 3010.142(a). A statement of position is limited to the existing record and may not include any new evidentiary material. See 39 CFR 3020.123(g). Filings styled as a brief or comments, conforming with the content and timing requirements, shall be deemed statements of positions. Any statement of position is due August 9, 2021.

3. Request to Present Oral Argument

Oral argument has not historically been part of N-cases; the Commission would only grant a request to present oral argument upon an appropriate showing of need by the presenting party. See Order No. 2080 at 53. Assuming that no rebuttal case is filed, any party may file a request to present oral argument by July 22, 2021.

O. The Commission's Advisory Opinion

Unless there is a determination of good cause for extension, the Commission shall issue its advisory opinion within 90 days of the filing of the Request. See 39 CFR

3020.102(a). Therefore, absent a determination of good cause for extension, the Commission shall issue its advisory opinion in this proceeding by September 15, 2021. “The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his [or her] judgment the opinion conforms to the policies established under [title 39, United States Code].” 39 U.S.C. 3661(c). The advisory opinion shall address the specific changes proposed by the Postal Service in the nature of postal services. See 39 CFR 3020.102(b).

P. Public Representative

Pursuant to 39 U.S.C. 3661(c), Mallory L. Smith shall continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding. See Order No. 5900 at 3, 4.

V. Ordering Paragraphs

It is ordered:

1. The procedural schedule for this proceeding is set forth below the signature of this Order.
2. Pursuant to 39 CFR 3010.106 and 3020.122(b), the Commission appoints Commissioner Ann C. Fisher to serve as presiding officer in Docket No. N2021-2, effective immediately.
3. Commissioner Fisher is authorized to propound formal discovery requests upon any party, at her discretion. The numerical limitation on interrogatories appearing in 39 CFR 3020.117(a) shall not apply to the Presiding Officer.
4. Commissioner Fisher is authorized to rule on procedural issues such as motions for late acceptance and discovery-related matters such as motions to be excused from answering discovery requests.

5. Commissioner Fisher is authorized to make other rulings in this Docket not otherwise specifically reserved to the Commission according to 39 CFR 3020 and 3010.106.

6. Pursuant to 39 U.S.C. 3661(c), Mallory L. Smith shall continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

7. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Mallory Smith

Federal Register Liaison.

Procedural Schedule for Docket No. N2021-2

(Established by the Commission, June 21, 2021)

Technical Conference Dates:

Deadline to Email <i>N2021-2registration@prc.gov</i> to Register to Participate in the Live Technical Conference via WebEx	June 23, 2021
Filing of the Postal Service's Materials for the Technical Conference	June 25, 2021
Technical Conference (live via WebEx)	June 28, 2021, at 11:00 a.m. Eastern Daylight Time

Intervention Deadline:

Filing of Notice of Intervention	July 1, 2021
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Discovery Deadlines for the Postal Service's Direct Case:

Filing of Discovery Requests	July 15, 2021
Filing of the Postal Service's Answers to Discovery	July 22, 2021

Deadlines in Preparation for Hearing (assuming no rebuttal case):

Filing of Notice Confirming Intent to Oral Conduct Cross-Examination	July 22, 2021
Filing of Request to Present Oral Argument	July 22, 2021
Filing of Notice of Designations	July 23, 2021
Filing of Notices of Designated Materials	July 27, 2021

Rebuttal Case Deadlines (if applicable):

Filing of Notice Confirming Intent to File a Rebuttal Case	July 20, 2021
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Filing of Rebuttal Case	July 29, 2021
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Surrebuttal Case Deadlines (if applicable):

Filing of Motion for Leave to File Surrebuttal Case	July 30, 2021
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Filing of Response to Motion for Leave to File Surrebuttal Case	August 3, 2021
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Filing of Surrebuttal Case (if authorized)	August 5, 2021
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Hearing Dates:

Hearings (with no Rebuttal Case)	July 29 to 30 and August 2, 2021
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Hearings (with Rebuttal Case, but no authorized Surrebuttal Case)	August 5, 6 and 9, 2021
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Hearings (with Rebuttal Case and authorized Surrebuttal Case)	August 10 to 12, 2021
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Briefing Deadlines:

Filing of Initial Briefs (with no Rebuttal Case)	August 9, 2021
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Filing of Reply Briefs (with no Rebuttal Case)	August 16, 2021
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Statement of Position Deadline:

Filing of Statement of Position (with no Rebuttal Case)	August 9, 2021
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Advisory Opinion Deadline:

Filing of Advisory Opinion (absent determination of good cause for extension)	September 15, 2021
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Docket N2021-2 Template to Attach to Motion for Access to Non-public Material Protective Conditions Statement

The Postal Service requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”) in Commission Docket No. N2021-2. _____ (name of participant filing motion) (hereinafter “the movant”) requests access to these materials related to Commission Docket No. N2021-2 (hereinafter “this matter”).

The movant has provided to each person seeking access to these materials:

- This Protective Conditions Statement;
- The Certification to Comply with Protective Conditions;
- The Certification of Compliance with Protective Conditions and Termination of Access; and
- The Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.
2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

- a. Must use these materials only related to this matter; and
- b. Must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as "Confidential" and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative)

/s/ _____

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response)

Attorney / Non-Attorney Representative
for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(5).

Certification To Comply With Protective Conditions

The Postal Service requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”) filed in Commission Docket No. N2021-2.

_____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to Docket No. N2021-2 (hereinafter “this matter”).

I certify that:

- I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;
- I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and
- I will comply with all protective conditions established by the Commission.

(signature of individual receiving access)

/s/ _____

(print name of individual receiving access)

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(6).

[FR Doc. 2021-13515 Filed: 6/24/2021 8:45 am; Publication Date: 6/25/2021]